

107TH CONGRESS
1ST SESSION

H. R. 1714

To authorize the Secretary of the Interior to enter into contracts for the use of excess storage and conveyance capacity in certain east slope facilities of the Fryingpan-Arkansas Project, Colorado, and to conduct studies for the enlargement of Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake, Fryingpan-Arkansas Project, Colorado, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2001

Mr. HEFLEY (for himself, Mr. MCINNIS, and Mr. SCHAFER) introduced the following bill; which was referred to the Committee on Resources

A BILL

To authorize the Secretary of the Interior to enter into contracts for the use of excess storage and conveyance capacity in certain east slope facilities of the Fryingpan-Arkansas Project, Colorado, and to conduct studies for the enlargement of Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake, Fryingpan-Arkansas Project, Colorado, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PURPOSES.**

4 (a) The purposes of this Act are the following:

1 (1) To authorize the Secretary of the Interior
2 to engage in studies relating to enlarging Pueblo
3 Dam and Reservoir and Sugar Loaf Dam and Tur-
4 quoise Lake, Fryingpan-Arkansas Project, Colorado,
5 as described in the Preferred Storage Options Plan
6 Report published September 21, 2000, by the South-
7 eastern Colorado Water and Storage Needs Assess-
8 ment Enterprise and the Final PSOP Implementa-
9 tion Committee Report dated April 19, 2001.

10 (2) To authorize the Secretary to enter into
11 contracts for the use of excess storage and convey-
12 ance capacity of certain east slope facilities of the
13 Fryingpan-Arkansas Project, Colorado, for munic-
14 ipal, water banking, and other purposes, as de-
15 scribed in the Preferred Storage Options Plan Re-
16 port published September 21, 2000, by the South-
17 eastern Colorado Water and Storage Needs Assess-
18 ment Enterprise and Final PSOP Implementation
19 Committee Report dated April 19, 2001, by amend-
20 ing the Act of August 16, 1962 (76 Stat. 389 et
21 seq.).

22 (b) Nothing in this Act is intended to—

23 (1) impair or otherwise interfere with the
24 project's authorized purposes or existing contractual

1 obligations of the Secretary or project beneficiaries,
2 including the renewal of any such contracts;

3 (2) increase diversions of project water from
4 the natural basin of the Colorado River;

5 (3) increase diversions of nonproject water from
6 the natural basin of the Colorado River within Colo-
7 rado into another river basin for delivery or storage,
8 except as provided in this Act;

9 (4) impair or otherwise interfere with Contract
10 Nos. 00XX6C0049 and 0009D6C0048 between the
11 Board of Water Works of Pueblo, Colorado, and the
12 United States, or the renewal of Contract Nos.
13 00XX6C0049 and 0009D6C0048 pursuant to the
14 authority that provides the legal basis therefor; or

15 (5) affect the interpretation or implementation
16 of existing law or legislation for any other congres-
17 sionally authorized water project.

18 **SEC. 2. SECRETARY AUTHORIZED TO CONDUCT STUDIES**
19 **FOR THE ENLARGEMENT OF PUEBLO DAM**
20 **AND SUGAR LOAF DAM.**

21 (a) The Secretary of the Interior is hereby authorized
22 to engage in storage space studies, up to and including
23 a feasibility study pursuant to section 8 of the Federal
24 Water Project Recreation Act (16 U.S.C. 4601–19) and
25 section 9(a) of the Act of August 4, 1939 (Chapter 418;

1 43 U.S.C. 485h(a)), as may be appropriate, relating to
2 enlarging Pueblo Dam and Reservoir and Sugar Loaf
3 Dam and Turquoise Lake, Fryingpan-Arkansas Project,
4 Colorado, including studies for the purpose of determining
5 the potential costs, benefits, and environmental and rec-
6 reational impacts of such enlargements and the use and
7 operation thereof, as described in the Preferred Storage
8 Options Plan Report published September 21, 2000, by
9 the Southeastern Colorado Water and Storage Needs As-
10 sessment Enterprise and Final PSOP Implementation
11 Committee Report dated April 19, 2001. Any report or
12 reports submitted to the President and Congress prepared
13 pursuant to this provision shall be considered to fulfill the
14 requirements of section 9(a) of the Act of August 4, 1939
15 (Chapter 418; 43 U.S.C. 485h(a)), to the extent that sec-
16 tion may be applicable.

17 (b) Before funds are expended for the studies author-
18 ized by this section, the Southeastern Colorado Water Ac-
19 tivity Enterprise shall agree to participate in the studies
20 and to fund the costs of the studies. The Southeastern
21 Colorado Water Activity Enterprise's funding of the costs
22 may be provided partly or wholly in the form of services
23 directly related to the conduct of the studies.

1 **SEC. 3. SECRETARY AUTHORIZED TO ENTER INTO CON-**
2 **TRACTS FOR THE USE OF EXCESS STORAGE**
3 **AND CONVEYANCE CAPACITY OF CERTAIN**
4 **EAST SLOPE FACILITIES OF THE FRYINGPAN-**
5 **ARKANSAS PROJECT, COLORADO.**

6 The Act of August 16, 1962 (76 Stat. 389), is
7 amended by adding at the end the following:

8 “SEC. 8. (a) The Secretary is authorized to enter into
9 contracts with any agency or entity, private or public, sup-
10 plying water for municipal and other purposes within the
11 project boundaries, for the use of excess water storage and
12 conveyance capacity for nonproject water in certain east
13 slope facilities, as described in the Preferred Storage Op-
14 tions Plan Report published September 21, 2000, by the
15 Southeastern Colorado Water and Storage Needs Assess-
16 ment Enterprise and Final PSOP Implementation Com-
17 mittee Report dated April 19, 2001, after consultation
18 with the Board of Directors of the Southeastern Colorado
19 Water Activity Enterprise: *Provided, however,* That such
20 contracts shall not impair or otherwise interfere with—

21 “(1) the project’s authorized purposes,

22 “(2) the ability of the project contractors to
23 meet existing Federal repayment obligations,

24 “(3) the storage allocations and limitations pur-
25 suant to Contract No. 5–07–70–W0086, as amend-
26 ed, between the Southeastern Colorado Water Con-

1 servancy District and the United States, and the al-
2 location principles adopted by the Southeastern Col-
3 orado Water Conservancy District on November 29,
4 1979, and confirmed by the District Court of Pueblo
5 County in Civil Action No. 40487 by decree dated
6 December 18, 1979, including any subsequent modi-
7 fications made by the District that are confirmed by
8 the District Court,

9 “(4) the yield of the project from its West Slope
10 and East Slope water rights, or

11 “(5) the capacity in Reclamation project facili-
12 ties which is needed to satisfy project purposes and
13 contractual obligations with a term exceeding one
14 year existing at the time of the execution of a con-
15 tract under the authority of this subsection.

16 “(b) The term of any contract executed pursuant to
17 this section shall not exceed the remaining term of Con-
18 tract No. 5–07–70–W0086, as amended, between the
19 Southeastern Colorado Water Conservancy District and
20 the United States. The Secretary shall renew any contract
21 executed pursuant to this section at the end of the con-
22 tract term on such conditions as the Secretary finds to
23 be just and equitable. The term of such contract renewal
24 shall be for a duration no less than the term granted the
25 Southeastern Colorado Water Conservancy District under

1 the contractual arrangement negotiated upon the expira-
2 tion of Contract No. 5–07–70–W0086.

3 “(c) To the extent water stored under the Project’s
4 Winter Water Storage Program spills from Pueblo Res-
5 ervoir due to execution of a contract executed pursuant
6 to this section, it will not be considered impairment or in-
7 terference under subsection (a)(5) if the holders of such
8 stored water are compensated by a credit for purchase of
9 project water to replace such spilled water, such credit to
10 be financed by a surcharge as described in subsection
11 (d)(4) imposed on contracts executed pursuant to this sec-
12 tion.

13 “(d) The Secretary shall not execute a contract pur-
14 suant to this section with any entity that has not signed
15 an agreement with the Southeastern Colorado Water Ac-
16 tivity Enterprise—

17 “(1) agreeing to reimburse an appropriate
18 amount of the Southeastern Colorado Water Activity
19 Enterprise’s implementation and development costs,
20 including such costs reimbursed to the United
21 States, incurred in determining and making excess
22 storage or conveyance capacity available for such
23 storage of nonproject water by municipal water pro-
24 viders within the project boundaries,

1 “(2) agreeing to cooperate in a flow manage-
2 ment program designed to maintain target minimum
3 flows of 100 c.f.s. on the Arkansas River just below
4 Pueblo Dam, as provided in the Implementation
5 Committee report dated April 19, 2001,

6 “(3) agreeing to participate in a long-term
7 water quality monitoring program as outlined in the
8 Implementation Committee report dated April 19,
9 2001, and

10 “(4) agreeing to pay any surcharges determined
11 appropriate and necessary by the Southeastern Colo-
12 rado Water Activity Enterprise Board of Directors,
13 as described in the Preferred Storage Options Plan
14 Report published September 21, 2000, by the South-
15 eastern Colorado Water and Storage Needs Assess-
16 ment Enterprise and the Final PSOP Implementa-
17 tion Committee reported dated April 19, 2001.

18 All such charges established by the Southeastern Colorado
19 Water Activity Enterprise shall be paid by the person or
20 by the agency or entity, private or public, which contracts
21 for the use of excess capacity, directly to the Southeastern
22 Colorado Water Activity Enterprise, not to the Secretary,
23 at such times and in such manner as the Southeastern
24 Colorado Water Activity Enterprise may direct.

1 “SEC. 9. (a) The Secretary is authorized to enter into
2 temporary contracts with any agency or entity, private or
3 public, operating a water bank established pursuant to
4 Colorado law, for use of facilities for the impounding, stor-
5 age, and carriage of nonproject water for irrigation, do-
6 mestic municipal, industrial, and other beneficial pur-
7 poses.

8 “(b) No contract executed under the authority of sub-
9 section (a) shall impair or otherwise interfere with—

10 “(1) the project’s authorized purposes,

11 “(2) the ability of the project contractors to
12 meet existing Federal repayment obligations,

13 “(3) the storage allocations and limitations pur-
14 suant to contract No. 5–07–70–W0086, as amended,
15 between the Southeastern Colorado Water Conser-
16 vancy District and the United States, and the alloca-
17 tion principles adopted by the Southeastern Colorado
18 Water Conservancy District on November 29, 1979,
19 and confirmed by the District Court of Pueblo Coun-
20 ty in Civil Action No. 40487 by decree dated Decem-
21 ber 18, 1979, including any subsequent modifica-
22 tions made by the District that are confirmed by the
23 District Court,

24 “(4) the yield of the project from its West Slope
25 and East Slope water rights, or

1 “(5) the capacity in Reclamation project facili-
2 ties which is needed to satisfy project purposes and
3 contractual obligations existing at the time of the
4 execution of a contract under the authority of this
5 subsection.

6 “(c) The Secretary shall not execute a contract pur-
7 suant to this section with any entity that has not signed
8 an agreement with the Southeastern Colorado Water Ac-
9 tivity Enterprise agreeing to pay any surcharges deter-
10 mined appropriate and necessary by the Southeastern Col-
11 orado Water Activity Enterprise Board of Directors to fi-
12 nance an appropriate portion of an operations and mainte-
13 nance reserve fund and any other terms determined appro-
14 priate and necessary by the Southeastern Colorado Water
15 Activity Enterprise Board of Directors, which may include
16 conditions requiring water available in the bank to be
17 made available for use within the basin of the Arkansas
18 River prior to making such water available for use in other
19 river basins within Colorado and any necessary or desir-
20 able limitations upon the time, place, or type of use of
21 waters made available through the water bank and the ap-
22 propriate duration of water use resulting from water bank
23 transactions.

24 “SEC. 10. All revenue generated pursuant to con-
25 tracts executed under sections 8 and 9, except for those

1 revenues generated pursuant to the surcharges described
2 in section 8(d)(4) and 9(c), shall be credited first to a
3 proportionate share of annual operations and maintenance
4 costs and then to repayment of the project in the year
5 the contract revenue is generated until such time as the
6 costs of the project have been repaid: *Provided, however,*
7 That the revenues so credited shall not be applied so as
8 to reduce the amount of the current annual payments due
9 to the Secretary from the project contractors or any other
10 parties that are responsible for paying outstanding reim-
11 bursable construction costs. Once the costs of the project
12 have been repaid, all revenue generated pursuant to con-
13 tracts executed under sections 8 and 9, except for those
14 revenues generated pursuant to the surcharges described
15 in sections 8(d)(4) and 9(c), shall be credited first to an-
16 nual operations and maintenance costs and then to the
17 Reclamation fund, to be used exclusively for the purpose
18 of financing extraordinary operations and maintenance,
19 rehabilitation, and replacements of project facilities.

20 “SEC. 11. Nonproject water diverted, stored, im-
21 pounded, pumped, or conveyed under a contract entered
22 into pursuant to sections 8 and 9 shall be exempt from
23 any acreage limitation provisions of the Act of June 17,
24 1902 (32 Stat. 388), and Acts amendatory thereof and
25 supplementary thereto including, but not limited to, the

1 Reclamation Reform Act of 1982 (96 Stat. 1263; 43
 2 U.S.C. 390aa–390zz–1) and from any farm unit size limi-
 3 tations established pursuant to section 4(c)(5) of the Act
 4 of August 11, 1939 (Chapter 717; 16 U.S.C. 590z–
 5 2(c)(5)): *Provided, however*, That in the event such non-
 6 project water is commingled with project water in Rec-
 7 lamation project facilities, and the resulting commingled
 8 supply is used to irrigate lands in a project contractor’s
 9 service area, then such commingled water shall bear the
 10 same acreage limitations or farm unit size limitations as
 11 the project water unless—

12 “(1) contract provisions are in effect which pro-
 13 vide that project or nonproject water, or both, will
 14 be accounted for on a quantitative basis, that project
 15 water will not be delivered to ineligible land, and
 16 that appropriate charges, as determined by the Sec-
 17 retary, will be paid for the project water, and

18 “(2) the charges for the use of the excess ca-
 19 pacity include an appropriate interest component, as
 20 determined by the Secretary.

21 “SEC. 12. Excess water storage capacity in certain
 22 east slope facilities to divert, store, impound, pump, or
 23 convey nonproject water made available under contracts
 24 executed pursuant to the provisions of section 8 shall not
 25 be utilized so as to increase diversion of nonproject water

1 from the natural basins of the Colorado or Arkansas Riv-
2 ers within Colorado into another river basin for delivery
3 or storage unless—

4 “(1) the diversion is the subject of a decree en-
5 tered prior to the effective date of this section for
6 which no new infrastructure is necessary to divert
7 the water out of the natural basin, or

8 “(2) the diversion is the subject of an existing
9 agreement, contemplating additional diversions di-
10 verted through or stored in the facilities authorized
11 by this Act, between the beneficiary of such
12 transbasin diversion and either the water conserva-
13 tion district, as defined under Colorado law, from
14 within whose boundaries the waters are proposed for
15 diversion or, in the absence thereof, a water conser-
16 vancy district, as defined under Colorado law, that
17 is a project contractor and from within whose
18 boundaries the waters are proposed for diversion,

19 “(3) the diversion is the subject of a future
20 intergovernmental agreement or other contractual
21 arrangement between the beneficiary of such
22 transbasin diversion and either the water conserva-
23 tion district, as defined under Colorado law, from
24 within whose boundaries the waters are proposed for
25 diversion or, in the absence thereof, a water conser-

1 vancy district, as defined under Colorado law, that
2 is a project contractor and from within whose
3 boundaries the waters are proposed for diversion, or
4 “(4) the beneficiary of such transbasin diver-
5 sion provides compensatory storage or alternate
6 water supply in an amount equal to the quantity di-
7 verted out of the basin for the benefit of either the
8 water conservation district, as defined under Colo-
9 rado law, from within whose boundaries the waters
10 are proposed for diversion or, in the absence thereof,
11 a water conservancy district, as defined under Colo-
12 rado law, that is a project contractor and from with-
13 in whose boundaries the waters are proposed for di-
14 version.”.

○